

The Commission, in rejecting Class' Petition, should make clear that it will permit no settlements for profit based on such petitions.<sup>62/</sup>

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to have the Presiding Judge withdraw himself due to bias. The full Commission has rejected this motion. WWOR-TV, Inc., FCC 90-167, released May 3, 1990.

62/ Long before the adoption of Sections 73.3523 and 73.3524, in a case in which a dissenting Commissioner urged use of the early call up procedure, the Commission viewed with severe disapproval efforts to parlay pleading rights into settlements for profit. In Tidewater Teleradio, Inc., 24 R.R. 653 (1962), Tidewater had applied for authority to assign the licenses of its Portsmouth, Virginia, AM and TV stations to a subsidiary of Gannett Co. Beachview Broadcasting Co., Inc., an unsuccessful applicant in the comparative hearing which resulted in the grant of the TV authorization to Tidewater, filed a petition to deny and request that Tidewater's TV license be revoked. Thereafter, it entered into an agreement pursuant to which it would receive nearly \$100,000, said to represent Beachview's comparative hearing expenses, in return for its not seeking reconsideration.

While finding that Beachview lacked standing, the Commission considered its allegations that Tidewater had not met its integration and programming promises, and designated the assignment application for hearing on these issues. The Commission disallowed the settlement agreement, however, finding it to be "wholly improper" and said that Beachview cannot "employ whatever procedural rights it may have in this proceeding as a basis for obtaining payment of any nature." Id. at 658. Commissioner Henry, in dissent, did "not believe that the action taken [with respect to Tidewater] goes far enough," and said that he would have required an early call up of Tidewater's renewals and consolidated them for hearing with the assignment application. Id. The Commission, without comment, did not agree.

Following the designation order, the assignment agreement between Tidewater and Gannett was terminated and, two weeks after the Commission's designation order, acting on a petition filed by Tidewater, Chief Hearing Examiner Cunningham terminated the proceeding. Id. at 660. Beachview then petitioned for reconsideration. Noting Beachview's "complete reversion" from settlement maker to petitioner, the Commission found that Beachview had forfeited whatever procedural rights it may have had. Id. at 660b. It dismissed Beachview's petition, saying "we will not countenance such a

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VIII. CONCLUSION

For all of the reasons set forth above, the Class Petition must be rejected.

Respectfully submitted,

GAF BROADCASTING COMPANY

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June 7, 1990

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misuse of our processes." Id. Commissioner Henry concurred in the Commission's action, which had the effect of relieving Tidewater from hearing scrutiny, but noted again that he would have ordered Tidewater to file early renewals, and have designated them for hearing. Id. at 660c.

DECLARATION OF  
IRVING KAGAN

1. I am a Senior Vice President, Secretary, General Counsel, and a director of GAF Corporation.

2. I have reviewed the "Opposition of GAF Broadcasting Company, Inc. to 'Petition to Require Filing of Early Renewal Application'" to which this Declaration is attached. All of the statements of fact contained in it concerning GAF Corporation are, based on my personal knowledge and official records of GAF Corporation maintained in regular course, true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 7th day of June, 1990.



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Irving Kagan

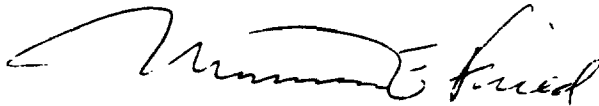
DECLARATION OF  
MATTHEW E. FIELD

1. I am the Senior Vice President and a director of GAF Broadcasting Company, Inc., and the General Manager of WNCN(FM), New York, New York.

2. I have reviewed the "Opposition of GAF Broadcasting Company, Inc. to 'Petition to Require Filing of Early Renewal Application'" to which this Declaration is attached. All of the statements of fact in it which relate to WNCN and GAF Broadcasting are, based on my personal knowledge, true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 7th day of June, 1990.

A handwritten signature in cursive script, appearing to read "Matthew E. Field", written over a horizontal line.

Matthew E. Field

CERTIFICATE OF SERVICE

I hereby certify that, on this 7th day of June, 1990, I have caused copies of the foregoing "Opposition of GAF Broadcasting Company, Inc. to 'Petition to Require Filing of Early Renewal Application'" to be mailed, via first class mail, postage prepaid, to the following:

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